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Government and Politics in Puerto Rico: New Formula for Self-Government

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Reviewed work(s):

Source: *International Affairs (Royal Institute of International Affairs 1944-)*, Vol. 30, No. 3 (Jul., 1954), pp. 331-341

Published by: [Blackwell Publishing](#) on behalf of the [Royal Institute of International Affairs](#)

Stable URL: <http://www.jstor.org/stable/2605753>

Accessed: 10/05/2012 18:24

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GOVERNMENT AND POLITICS IN PUERTO RICO

NEW FORMULA FOR SELF-GOVERNMENT

JESUS DE GALINDEZ

ON 25 July 1952 the Constitution of the new Commonwealth of Puerto Rico (*Estado Libre Asociado*) was officially proclaimed. This Constitution marks a new step in the political evolution of the island. In content it is not very different from other constitutions in Latin America. Its main interest lies in the fact that it is not the constitution of an independent and sovereign Republic, but is the basic law for the internal government of a territory passing from 'colonial' status to another, an intermediate status, which in some ways resembles the position of the British Dominions in their earlier stages of development and of the Commonwealth of the Philippines before it became an independent Republic; further, that it has been drawn up by the people of Puerto Rico themselves, not imposed from without.

The island of Puerto Rico is the smallest of the Greater Antilles, and lies to the east of the Dominican Republic. It has an area of 3,435 square miles, and a population of 2,210,703 inhabitants according to the census of 1950 (643.58 per square mile). It was a Spanish colony until 1898; there was never in the island a separatist movement similar in strength to those in which originated the independence of almost all the Spanish colonies at the beginning of the nineteenth century, nor to that which kept the colony of Cuba in perpetual agitation, but there was some demand for independence and in 1868 a very short-lived Republic was proclaimed in the town of Lares under the inspiration of Ramon E. Betances. When the last Cuban War for Independence began in 1895, both Cuba and Puerto Rico were governed according to the Spanish Constitution of 1876 with its special provisions for overseas territories. At that time there existed in Puerto Rico an autonomist rather than a separatist sentiment and it would seem that the grant of self-government by Spain in 1897 met local demands.

But it was too late: the Cuban insurrection led on in 1898 to a war between the United States and Spain, during the course of which an American expeditionary force was landed on the island of Puerto Rico and, by the treaty of peace of 10 December 1898, Spain ceded Puerto Rico to the United States. Since then politically Puerto Rico has evolved step by step towards its new Commonwealth status, which is itself considered by all as an interim stage pending changes which are not easy to forecast today.

From October 1898 to May 1900 the island was governed provisionally by the military commanders of the occupation forces. On 12 April 1900 the United States Congress provided for a civil government by an Organic Act known as the Foraker Act. Under the terms of this Act, the President of the United States now appointed a Civil Governor for the island, as well as justices of the Supreme Court of Puerto Rico. An Executive Council, also appointed by the President and composed of eleven members, five of whom were to be Puerto Ricans, the remaining six being heads of the executive departments, formed the upper chamber of a legislative assembly, the lower house of which, known as the House of Delegates and consisting of 35 members, was elected locally. Bills passed by this insular Legislature might be amended or repealed by the Congress of the United States.

This Organic Act was amended substantially on 2 March 1917. The new Organic Act, known as the Jones Act, contained a bill of rights, granted United States citizenship to all Puerto Ricans, and provided for greater participation by the local inhabitants in their government. Under the Jones Act, the people of Puerto Rico now elected both houses of the Legislature, a Senate composed of 19 members and a House of Representatives of 39. The President of the United States however continued to appoint a Governor for a four-year term of office, and also the Supreme Court justices, the Attorney General, the Commissioner of Education, and the Auditor, the heads of other departments being appointed by the Governor, with the consent of the Puerto Rican Senate. In 1947 the Congress of the United States granted a further instalment of self-government to Puerto Rico, under which the Governor of the island was in future to be elected by the local voters every four years. The Governor was henceforward to appoint the heads of all the executive departments, including the Attorney General and the Commissioner of Education, but the Auditor and the Supreme Court justices were still to be appointed by the President of the United States. Already in 1946 the President had appointed a Puerto Rican, Jesus Piñero, as Governor. The first Governor elected by the inhabitants of Puerto Rico under the new arrangements in 1948 was Luis Muñoz Marín. He had previously been the President of the Senate, and was the leader of the Popular Democratic Party which has won all elections in the island since 1940.

The rise of the Popular Democratic Party is the latest development in the evolution of the political parties of the island. During the last days of the Spanish period Puerto Rican political opinion was divided into three groups: a conservative element identified with Spain; a revolutionary element led by intellectuals like Betanzos and Hostos; and, the largest of the three, the autonomist element led by Luis Muñoz Rivera. This last group survived the Spanish-American war and as the Unionist Party, a middle-of-the-road party only nominally favouring independence, it dominated insular politics for some twenty years. After the 1928 elections

the Unionist Party was reconstituted as the Liberal Party. It still remained the largest party but in 1932 a coalition of the Socialists with the Republicans won control of the Legislature and held it to 1940. Meanwhile their organization was transformed into the Estadista Party, supporters of eventual integration into the United States as a state of the Union.

In addition, during the nineteen-twenties, a Nationalist Party was organized under Pedro Albizu Campos. It is an extremist group both in its ideology and its activities; and its leaders have been sentenced to prison on several occasions after attempted acts of violence, the last of which occurred in October 1950. A more moderate party has recently been organized, the Independentista Party, led by Gilberto Concepción de Gracia; it also defends the ideal of immediate independence but seeks to achieve it by pacific means.

The Popular Democratic Party was founded in 1938 by Senator Luis Muñoz Marín, who had broken with the Liberal Party. It fought the election of 1940 with the slogan of 'Bread, Land, and Freedom', which reflected its political and social programme, and secured a majority in both houses of the insular Legislature. In the 1944 elections the new party won all except four seats in both houses. The Nationalists and Independentistas have accused Luis Muñoz Marín of being a traitor to his early nationalist ideals. His policy was however one of working first for economic reform within the existing constitutional framework and only secondarily of seeking a wider measure of autonomy. In pursuit of this latter goal he eventually proposed that political formula which has been incorporated in the new Constitution of 1952 to cover the latest phase in the relationship of Puerto Rico with the United States.

Proposed by Governor Luis Muñoz Marín himself, this formula was introduced into the Congress of the United States in 1949, and was finally approved as an Act on 3 July 1950 (Public Law No. 600). This act authorized the Puerto Ricans, if they so decided by a popular referendum, to organize their own government under a constitution drafted by themselves. Such a constitution was to be submitted to popular approval in another plebiscite, the Congress of the United States reserving for itself final approval. It was a further condition that the new Puerto Rican Constitution should be in conformity with the Federal Constitution of the United States and with such parts of the Organic Act of 1900 (as amended in 1917 and 1947) as were still relevant. Public Law No. 600 of 1950 listed the paragraphs of the Organic Act which would be abrogated when the new Constitution was approved; all remaining paragraphs about 'federal relations between the United States and Puerto Rico' were to continue in force.

An intensive political campaign now opened in Puerto Rico. The Popular Democratic Party and the government espoused the proposed constitutional plan; the Nationalists and the Independentistas opposed it.

During the last days of October 1950 a brief but bloody revolt of the Nationalists occurred, during which several people were killed, and Albizu Campos and some of his partisans were again sentenced to prison. A few days later two Nationalists living in New York City made an attempt on the life of President Truman.¹ The Independentista Party recommended abstention in the plebiscite. The Socialist Party and the Estadista Party declared themselves in favour of the proposed Constitution.

The first plebiscite took place on 4 June 1951; 387,016 votes were cast for, and 119,169 against (out of a total registered electorate of 777,391) proceeding to draw up a constitution.

In August the special elections to choose the members of the Constituent Convention were held. The Popular Democratic Party got 70 seats, the Estadista Party 15, and the Socialist Party 7. The Independentista Party was qualified to participate in this Convention with a minimum of 3 seats because of their electoral strength in 1948, but it boycotted the elections; the Nationalist Party and the Communists could in no way participate in the elections because of their small number, and the Liberal Party had virtually disappeared.

The work of the Constituent Convention was relatively brief. In general its debates were very similar to those of other Latin American Constituent Assemblies, with much ideological discussion. The final text of the constitution was approved on 4 February 1952 by 88 votes in favour, and 3 against (2 of the Estadistas delegates and 1 of the Socialists).

The Constitution was submitted to a second plebiscite on 3 March 1952. The position of the different political parties was similar to that taken the previous year though now the Estadista Party left its members free to choose individually. 375,000 votes were cast in favour of the new Constitution, and 83,000 against (out of a total registered electorate of 783,491), i.e. a proportion in favour somewhat greater than that obtained in the first plebiscite.

The last stage was the study and final approval of the Constitution by the Congress of the United States. Although it was thought in the beginning that this approval would be of a routine nature, some serious objections to the new document were raised. The most general complaint came from certain congressmen who believed they detected 'socialistic' and even 'communistic' principles in the paragraphs of Section 20 of Article 2, which contained those principles to be found in many recent Latin American Constitutions, such as the right 'to obtain work'. Some Catholic Congressmen also requested a clarification of Section 5 of the same Article, which provided that public education would be non-sectarian, to ensure that the Article did not bar education in non-subsidized free schools, particularly parochial Catholic schools.

In addition certain members of the Senate believed that amendments

¹ Four members of the Nationalist group staged a shooting demonstration in the House of Representatives of the United States on 1 March 1954.

to the Constitution should require the approval of the Congress of the United States. This proposal was resented by all Puerto Ricans, especially the leaders of the Popular Democratic Party, who interpreted it as a repudiation of their position in the face of attacks from the Independentistas. Finally a proviso was added to the Constitution that any future amendment or revision should be consistent with the United States Federal Constitution, the Organic Act defining federal relations with Puerto Rico, and Public Law No. 600 which originally authorized the drafting of a constitution.

The final approval by the Federal Congress on 3 July 1952 and its signature by President Truman took place just in time for the ceremonies of 4 July, during which the flag of Puerto Rico was officially raised for the first time alongside the flag of the United States. The definitive proclamation of the Constitution took place on 25 July 1952. In the general elections of 5 November 1952 the two amendments to Article 2 and the amendment to paragraph 3 of Article 7 proposed by the Congress of the United States, were approved by a large majority. These elections also served to show the relative strength of the different political parties in the island. The Popular Democratic Party of Luis Muñoz Marín again triumphed, receiving 426,524 votes. This represented 64 per cent of the total votes and a gain of 35,000 over the number of votes received in 1948.

However, the most interesting aspect of the election was the advance achieved by the Independentista Party, which now obtained 125,403 votes, or 18.5 per cent of the total, thus doubling the number it had received in 1948. Its gains were made mainly at the expense of the Estadista Party, which dropped to the third position with 84,056 votes or 12.5 per cent of the total. The Socialist Party now virtually disappeared, gaining only 21,907 votes, or less than the 5 per cent of the total which the electoral law of Puerto Rico requires if a party is to maintain its legal status. In 1948 the Socialists, the Estadista Party and the members of the former Liberal Party had joined in a coalition which received 183,000 votes. The Independentista Party and Estadista Party now divided between them the minority seats in the Legislature provided under the new Constitution in accordance with their strengths in the election.

The new Constitution has created a new status for the island. It is not a State, but neither is it a colony, and it has been raised from the previous status of 'unincorporated territory' to another which the Constitution calls 'Commonwealth'. The question of status had been the most discussed subject in the Constitutional Convention. Nationalists and Independentistas insisted that the whole process of constitutional change was a farce, and that despite a new Constitution Puerto Rico would continue to be an American 'colony'. They pointed out that the Organic Act regulating the federal relations between Puerto Rico and the United States would remain in force. The draftsmen of the Constitution themselves

sought most carefully to find a term to define the new degree of self-government which was to be achieved, and in the end they solved the problem by deciding to use the wording, *Estado Libre Asociado* in Spanish (Free and Associated State) and 'Commonwealth' in English.

In order to understand the intentions of those who drafted the Constitution we must analyse its preamble and Article 1, and Resolution No. 22 of the Constituent Convention of 4 February 1952.

The preamble to the Constitution, among other things, states:

We consider as determining factors in our life our citizenship of the United States of America and our aspiration continually to enrich our democratic heritage in the individual and collective enjoyment of its rights and privileges; our loyalty to the principles of the Federal Constitution; the coexistence in Puerto Rico of the two great cultures of the American Hemisphere.

And Article 1, Section 1 establishes:

The Commonwealth of Puerto Rico is hereby constituted. Its political power emanates from the people and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America.

The wording seems to be deliberately ambiguous, in order to substitute for a status imposed by Washington a voluntarily accepted partnership; that is, before 1952 the political régime of Puerto Rico was established unilaterally by the Government and Congress of the United States whereas now the Puerto Ricans, by a decision of the majority, accept their connexion with the United States and regulate their own internal political régime on the basis of a 'compact agreed upon between the people of Puerto Rico and the United States of America'. The nature of the 'compact agreed upon' however does not seem to be clear.

To understand the exact shade of meaning that the constituents wanted to give the words *Estado Libre Asociado*, chosen after evident hesitation, it is necessary to take into account Resolution No. 22 of the Convention. It was impossible to find a Spanish term which reflected precisely the political and international meaning of the English word 'Commonwealth'. For this reason the Convention decided to use different terms in the Spanish and English texts of the constitution; but from the preamble to this Resolution it can be inferred that the first definition adopted was the English word 'Commonwealth'. The two main clauses in the preamble of Resolution No. 22 are as follows:

Whereas, the word 'Commonwealth' in contemporary English usage means a politically organized community, that is to say a state (using the word in the generic sense) in which political power resides ultimately in the people, hence a free state, but one which is at the same time linked to a broader political system in a federal or other type of association and therefore does not have independent and separate existence.

Whereas, the single word 'Commonwealth', as currently used, clearly defines the status of the body politic created under the terms of the compact existing between the people of Puerto Rico and the United States, i.e. that of a state

which is free of superior authority in the management of its own local affairs but which is linked to the United States of America and hence is a part of its political system in a manner compatible with its federal structure.

This word 'Commonwealth' therefore suggests the type of State which the draftsmen of the Constitution had in mind. But it would be misleading to interpret it in the sense in which it is used by other political organizations known under this name; neither the Commonwealth of Massachusetts nor the Commonwealth of Australia, still less the British Commonwealth of Nations, have anything in common with the sense in which the Puerto Ricans use the term Commonwealth. The Puerto Rican Constitutional Convention, it would seem, imported the term from the Philippine Islands, formerly an 'unincorporated territory' of the United States like Puerto Rico, which was called 'Commonwealth' during the decade that elapsed between 1935 and full independence in 1946; but the internal organization of the Philippines and their relations with the United States were in many ways different from the present status of Puerto Rico.

The main purpose for selecting this term, it would appear, was to emphasize the idea that Puerto Rico (1) would not be another state of the American Union, (2) would enjoy internal autonomy, and (3) would continue to be linked to the United States. There is no doubt that the Spanish words *Estado Libre Asociado* (Free Associated State) more suitably reflects this purpose. The status of Puerto Rico is perhaps comparable to that of the Associated States in the French Union.

A better appreciation of all the implications of the formula must await the answer of time. Only then will it be possible to assess the degree of dependence or interdependence between the new *Estado Libre Asociado* or Commonwealth and the Federal Union of the United States.

In the meantime it is important to note the exact powers granted to the Government of Puerto Rico, and their relation to those reserved to the United States Federal Government. In short, it may be said that Puerto Rico enjoys full internal autonomy and the right to elect its officials; but it is subject to the Federal Government of the United States in all matters relating to international affairs. On the other hand, Puerto Rico has no power whatsoever to participate in the Federal Government of the United States Union.

The Constitution establishes a government based on the popular will, as expressed in elections, and organized under the structure of the traditional three branches: there will be a Governor elected by the people for a four-year term; for the purpose of exercising executive power the Governor shall be assisted by Secretaries whom he shall appoint with the approval of the Senate; a legislative branch consisting of two Houses elected by the people; and a judicial power consisting of an insular Supreme Court of Justice and other lower courts, whose justices are appointed by the Governor with the advice and consent of the Senate. Henceforth, Bills passed by the insular Congress and proclaimed by the

Governor will have full force without further confirmation by the Congress of the United States.

The Constitution of Puerto Rico offers several interesting innovations. It guarantees the minority parties one third of the seats in the Legislature. A Secretary of State may be appointed by the Governor with the advice and consent of both the insular Senate and House of Representatives—and this in a government which, at least for the time being, cannot maintain international and diplomatic relations. It is the Secretary of State who would act as Governor during any vacancy in that office.

The Constitution contains a Bill of Rights, very similar to those of certain Latin American countries. This part of the Constitution was precisely the one under fire from many American Congressmen, who were alarmed by some items that today are normal in Latin America but do not exist in the amendments to the Constitution of the United States. These include enumeration of the rights granted to every worker such as maximum hours, minimum wages, collective bargaining, the right to strike and the right 'to obtain work' (Section 20) which was finally eliminated.

Although it might seem a secondary matter in a constitution, there is provision for a Puerto Rican flag, a hymn, and a coat of arms. The Constitution in its General Provisions refers this matter to the Legislative Assembly; it was probably a precaution to avoid troublesome points of discussion during the Constitutional Convention, in as much as the national flag and the national anthem generally used in Puerto Rico until that time had also been the battle symbols of the extremists. However, the session of the Legislative Assembly, called as soon as the Constitution entered in force, approved the traditional symbols: i.e. a flag similar to the Cuban one but with the colours in reverse, *La Borinqueña* with some kind of military rhythm instead of the former dance rhythm, and the coat of arms granted by the Spanish kings in the early days of the colony.

The Constitution has little to say about relations with the United States. These relations have been determined by the Organic Act of 1900, as amended by the laws of 1917 and 1947, all of which remain in force. It is explicitly declared in the Public Law No. 600 of 1950, and has been repeated in the approval granted to the Constitution of Puerto Rico by the Congress of the United States, that any amendment of the Constitution must be compatible with the Resolution decreed by the Congress of the United States, with the pertinent provisions of the Constitution of the United States, with the Law of Federal Relations with Puerto Rico, and with the Public Law No. 600 of the 81st Congress, adopted in the nature of a compact. The only paragraphs which have been abrogated in the Organic Law are those explicitly mentioned in this Public Act No. 600, which have been replaced by the pertinent paragraphs in the new Constitution; they are mainly those referring to the structure of the Government of Puerto Rico itself.

Puerto Rico continues to be a territory belonging to the United States

without being a state of the Union. This status has been asserted several times in the past by the Supreme Court of the United States. Its inhabitants were proclaimed United States citizens by the law of 1917, and as such have a right to use American passports, to travel freely between the island and the continental territories, and to vote in any place in the United States where they establish residence. They are also subject to draft in the United States Army.

But their legal-political position, which differs in no way from that of other American citizens if they live in any of the forty-eight states of the Union—more than 450,000 live at present in the city of New York alone—is very different if they live in the island of Puerto Rico. There they have no vote in United States presidential elections, nor do they send senators or representatives to the Federal Congress in Washington; and they are exempt from federal taxation, paying only the taxes levied by the insular government.

The only indirect participation of Puerto Rico in United States federal affairs is through a Resident Commissioner in Washington. He is elected by popular vote every four years, he has a seat in the House of Representatives of the United States, where he may speak but not vote; and he represents the Government of the island in its dealings with government departments in Washington. Concerning matters regulated by federal legislation, Puerto Rican lawsuits are submitted to the federal courts in the island, and can be referred to the Court of Appeals of the First District in Boston and to the Supreme Court of the United States.

The export and import of foreign goods in Puerto Rico is liable to the same customs tariff as is in force in the United States; its revenue accrues to the insular Government of Puerto Rico to defray its expenses. The trade between the island and the main territory of the United States is free, but the Federal Government of the United States reserves the right to fix import quotas on certain insular products (in fact, the imports of refined sugar are limited at the present time). Commerce between Puerto Rico and the United States is, of course, subject to the coastwise restrictions on shipping and must be carried in United States ships.

All United States federal laws are in principle in force on the island, unless the Bill is self-exclusive. Thus Puerto Rico was specifically excluded from many of the laws passed during the New Deal programme of President F. D. Roosevelt, probably in order to avoid trouble originating in the unequal economic and social standards of the island and of the mainland territory of the United States.

The most outstanding difference between the present status of Puerto Rico and that of an independent Republic lies in the Puerto Rican Government's lack of all international and military powers. No provision is made in the Constitution under which the Government of the new *Estado Libre Asociado* is authorized to maintain diplomatic relations, or to seek admission to international organizations. However, this omission might be

interpreted in the future as permitting further constitutional development; similar to the process which took place in some British Dominions, and that now proceeding in the French Union.

The first result of the new status of Puerto Rico was seen during the last 8th General Assembly of the United Nations. In accordance with the Charter of San Francisco, the Government of the United States had sent annual reports to the United Nations on the administration of Puerto Rico as a non-self-governing territory. It was announced in 1953, however, that the United States would present a final report up to 25 July 1952, the date on which the Constitution entered in full force. When this announcement and report came before the fourth committee of the General Assembly of the United Nations a very interesting discussion opened on the new status of Puerto Rico. Up to the fall of 1953, 'the case of Puerto Rico' had not been officially discussed in international gatherings. This had been a cause of uneasiness in some Latin American Republics, especially in Argentina. But on the only occasion that an attempt was made to introduce the case officially, in the Special Inter-American Conference for Dependent Territories held in Havana in 1949, the majority of the Government members of the Organization of the American States (OAS), advised against including the case of Puerto Rico on the agenda, at least for the time being.

During discussions, first in the *ad hoc* Committee to the non-self-governing territories and subsequently in the Fourth Committee on Trusteeship matters of the General Assembly, the delegations split in three blocks on this point. A small majority, in which were included most of the Latin American Governments, supported the position of the United States, maintaining that Puerto Rico had acquired a status of internal autonomy, and voted that the United States Government should not be required to report further on its administration of Puerto Rico. Another group, whose main spokesmen were the delegates from India, Burma, Iraq, Mexico, and Guatemala, with the support of the Soviet bloc, maintained that Puerto Rico was still a non-self-governing territory, and opposed the resolution. A third group, including the colonial Powers, abstained in accordance with the general principles governing their attitude towards the Trusteeship committee.

The Puerto Ricans themselves expressed their conflicting points of view, as revealed during the campaign in the island. The Resident Commissioner of Puerto Rico in Washington, Dr Fernós Isern, was appointed an alternate-delegate of the United States to the General Assembly and, in the Fourth Committee, defended the formula on behalf of the Government of Puerto Rico. The leaders of the Independentista Party and the Nationalist Party were not allowed to speak, but circulated statements among the delegates.

It was clear that the supporters of the United States and the Puerto Rican Government, although in a majority, could not obtain the two-thirds vote usually required in plenary meetings of the General Assembly.

But on this occasion the rule of a two-thirds vote was waived, and the Resolution in favour of the United States position was finally approved on 27 November 1953, by 26 votes in favour, 16 against, and 18 abstentions.

During this plenary meeting, the delegate of the United States, Mr Henry Cabot Lodge, speaking for President Eisenhower, said: 'If . . . Puerto Rico adopts a resolution in favour of more complete or even absolute independence (the President) will immediately thereafter recommend to Congress that such independence be granted'. Profiting by this statement, the Puerto Rican congressmen belonging to the Independendista Party proposed in January 1954 that a petition for full independence should be approved and sent to the United States Government; this proposal was, however, defeated by the majority of congressmen belonging to the Popular Democratic Party, who support the present constitutional arrangement.

However, it is possible that in the near future Puerto Rico might ask and might obtain admission to some of the United Nations specialized international organizations concerned with technical subjects. It is difficult to envisage its admittance to political organizations so long as the present status of Puerto Rico obtains.

As previously mentioned, another difference between the Commonwealth of Puerto Rico and a completely sovereign State lies in lack of military power. Puerto Rico has no national army. The Governor is commander-in-chief of a local militia; but the Puerto Ricans are drafted into the United States Army, which retains its military bases in the island exactly as it did before the Constitution was proclaimed. In units with Puerto Rican soldiers both the Puerto Rican and the American flags are flown; incidentally, one of these units (the 65th Regiment) fought in Korea for many months.

Puerto Rico also lacks a national currency. Again, many public services, like the Post Office, continue to be under United States federal auspices. And, of course, immigration is subject to the United States federal law and authorities.

There is nothing explicit in the Constitution to prevent the future evolution of the new Commonwealth or *Estado Libre Asociado* of Puerto Rico; advance might be made on the same pattern followed years ago by the Dominions of the British Commonwealth, or Puerto Rico might be transformed into an independent Republic or a state of the United States Federal Union. That evolution will depend principally upon the will of the Puerto Rican people, and the fluctuations of their political parties, in inevitable correlation with the economic standard of the island.

At any rate, the present and future political status of Puerto Rico offers an interesting case study for all students of political science and international law.

April 1954